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Constitutional Law—Due Process—Insurance—State Regulation of Out-of-State Mail-Order Companies.—People v. United Nat'l Life Ins. Co

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CASE NOTES

Constitutional Law—Due Process—Insurance—State Regulation of Out-of-State Mail-Order Companies.—*People v. United Nat'l Life Ins. Co.*[1]—United National Life Insurance Company, Pioneer Life Insurance Company and National Liberty Life Insurance Company, were mail-order insurance companies organized under the laws of states other than California. None of the three maintained any office, agent or other representative within California, nor had any applied for or received a certificate of authority to transact the business of insurance in California as required by Section 700 of the California Insurance Code.[2] Each company solicited, negotiated and consummated its insurance contracts exclusively by use of the mail. California residents who, after receiving solicitation in the mail, wished to be insured by either Pioneer or National would complete the required forms and mail them together with the first premium to the company's office. Upon acceptance by the company in its resident state, the policy would become effective. United's procedure differed only to the extent that its policy was pre-indorsed and became effective in California when the customer deposited in the mail the completed forms and required premium.

The Commissioner of Insurance brought suit to enjoin the companies from transacting the business of insurance, directly or indirectly, by mail or otherwise, within the State of California until they obtained a certificate of authority as required by section 700. The defendants affirmatively defended on the basis that California, under the due process clause of the fourteenth amendment, did not have the power to regulate the activities of foreign insurers whose sole contact with the state was through the mail. The trial court in entering summary judgment for the defendants sustained their claim. On appeal by the commissioner, the California Supreme Court reversed and HELD: The state has the constitutional power to regulate the transactions of foreign insurers who do business with California residents exclusively by mail from offices outside the state.

State regulation of interstate insurance transactions has a unique history. In 1868, the United States Supreme Court held that the business of insurance transacted across state lines was not interstate commerce, and therefore was not subject to federal regulation under the commerce clause.[3] From that time until 1944, based "on the rationalization that insurance was not commerce, yet was business affected with a vast public interest, the states developed comprehensive regulatory and taxing systems."[4] The power of the states to legislate on business activity affecting other states was limited solely by the jurisdictional principles embodied in the due process clause of the fourteenth amendment.[5] In 1944, the Supreme Court reversed itself and held that interstate

1 66 Cal. 2d 577, 427 P.2d 199, 58 Cal. Rptr. 599, appeal dismissed, 88 S. Ct. 506 (1967).
2 Cal. Ins. Code § 700 (West 1955).
3 Paul v. Virginia, 75 U.S. (8 Wall.) 168 (1868).
4 Prudential Ins. Co. v. Benjamin, 328 U.S. 408, 415-16 (1946).
5 Id. at 416.

transactions of insurance are interstate commerce and consequently subject to the regulation of Congress.[6] In direct response to this holding, Congress passed the McCarran-Ferguson Act[7] which provides that absent federal legislation dealing with the insurance business, the regulation and taxation of insurance "shall be subject to the laws of the several States . . . ."[8] The Supreme Court in *Prudential Ins. Co. v. Benjamin*[9] declared the McCarran-Ferguson Act constitutional and stated that the act "clearly put the full weight of [congressional] power behind existing and future state legislation to sustain it from any attack under the commerce clause . . . ."[10] After the decision in *Benjamin,* it seemed clear that absent specific federal legislation, state jurisdiction over interstate insurance transactions was subject only to the limitations prescribed by the due process clause of the fourteenth amendment. In 1962, this proposition was modified by *State Bd. of Ins. v. Todd Shipyards Corp.*[11] In *Todd,* the United States Supreme Court apparently held that the constitutionality of state regulation and taxation of interstate insurance should be determined according to the due process standard existing prior to the enactment of the McCarran-Ferguson Act.

The California Supreme Court in *United* used this reading of *Todd* as a starting point in reasoning to its conclusion. The court felt that it had to decide the issue presented according to cases decided prior to 1945, and specifically that its decision had to be kept within the limits set by *Allgeyer v. Louisiana,*[12] *St. Louis Cotton Compress Co. v. Arkansas,*[13] and *Connecticut Gen. Life Ins. Co. v. Johnson.*[14] *Allgeyer* was concerned with the validity of a penalty imposed on Louisiana citizens who insured property in the state with an insurer who had not complied with Louisiana law. *St. Louis Cotton Compress* and *Connecticut General* involved taxes imposed on premiums paid to foreign insurers who had insured property in the taxing state. In each instance the Supreme Court declared the state action void under the due process clause. The rationale in each case was the same. The insurance contracts, which covered risks within the state and which gave rise to the contested state action, were entered into outside the state; in addition, all activities relevant to the making and to the performance of the contracts were carried on outside the state. Consequently, because all activity occurred outside the state, the state had no power to tax or regulate these activities. The California court in discussing and analyzing these cases stressed that the legislation was declared invalid precisely because no activity occurred within the taxing or regulating state.[15]

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6 United States v. South-Eastern Underwriters Ass'n, 322 U.S. 533 (1944).
7 59 Stat. 33 (1945), as amended, 15 U.S.C. §§ 1011-15 (1964).
8 15 U.S.C. § 1012 (1964).
9 328 U.S. 408 (1946).
10 Id. at 431.
11 370 U.S. 451 (1962).
12 165 U.S. 578 (1897).
13 260 U.S. 346 (1922).
14 303 U.S. 77 (1938).
15 "This trilogy of cases merely tells us that where there are no activities within the regulating state . . . regulation will not meet due process tests." 66 Cal. 2d at 590, 427 P.2d at 207, 58 Cal. Rptr. at 607.

Continuing its treatment of pre-McCarran-Ferguson Act cases, the California court discussed and relied heavily upon two other Supreme Court cases, *Osborn v. Ozlin*[16] and *Hoopeston Canning Co. v. Cullen*.[17] *Osborn* was concerned with the constitutionality of a Virginia statute which required all insurance companies, authorized to do business in that state, to use only registered resident agents when insuring certain risks within Virginia. In rejecting the claims of foreign insurers, licensed to do business in Virginia, that the statute as to them was a violation of due process, the Court stated:

> [Virginia] merely claims that her interest in the risks which these contracts are designed to prevent warrants the kind of control she has here imposed. This legislation is not to be judged by abstracting an isolated contract written in New York from the organic whole of the insurance business, the effect of that business on Virginia and Virginia's regulation of it.[18]

In *Hoopeston,* New York subjected certain foreign fire insurance associations who employed agents to investigate risks within the state to the laws of New York as a condition to their insuring property within New York. The associations contended that they were not subject to New York law since the insurance contracts were signed in Illinois and losses were paid by checks mailed from that state. In rejecting this contention, the Court stated: "Assuming that the formalities of contract are carried on in Illinois, the issue remains whether the insurance enterprise as a whole so affects New York interests as to give New York the power it claims."[19]

The California court concluded that the pre-McCarran-Ferguson Act cases represented "two separate yet consistent trends of decision."[20] The decisions were separate in that the philosophy applied in *Osborn* and *Hoopeston* differed from that applied in earlier cases. The earlier cases laid emphasis on the places of contracting and performance while *Osborn* and *Hoopeston* laid emphasis on the contacts with the regulating state established by the insurance transactions and the state's interest arising from such contacts. The court maintained the cases were consistent—the earlier cases represented "situations where there were no contacts sufficient to support the jurisdiction of the regulating state."[21] Essentially, the contacts in *United* were that the insureds were California residents and the defendants were continuously soliciting business in California through the mail. Considered alone these contacts probably would not be sufficient to sustain jurisdiction. However, when the state interest arising from these contacts is injected, the contacts acquire a greater significance which, in the court's view, supports California's action. The substantial state interest involved in *United* was not defined by the court, but its existence, in view of the minimal contacts, was essential.

On the basis of the pre-McCarran-Ferguson Act decisions, and especially

[16] 310 U.S. 53 (1940).
[17] 318 U.S. 313 (1943).
[18] 310 U.S. at 62-63.
[19] 318 U.S. at 316.
[20] 66 Cal. 2d at 589, 427 P.2d at 207, 58 Cal. Rptr. at 607.
[21] Id.

on the basis of the philosophy presented by *Osborn* and *Hoopeston,* the court concluded, "interstate insurance transactions may properly be regulated when they have sufficient contacts with the regulating state so as to give the latter a substantial interest in the transactions."[22] The court's examination of the contacts showed that the insureds were California residents and that the solicitation of insurance actually took place in California where the individual addressee received the advertising material and other forms. In analysing the methods of solicitation, the court concluded that the defendants had solicited insurance in California as manifestly as if they had solicited through representatives physically present within the state. Although the court did not make explicit the substantial state interest arising from these contacts, it did state that California's interest was "obvious" and pointed out that some insureds could become the responsibility of the state if the insurers were unwilling or unable to comply with their policy provisions.[23]

The significance of *United* lies in the fact that it represents the furthest a state supreme court has gone in sanctioning state regulation of interstate insurance transactions. In reaching this result, the California court relied upon the philosophy expressed in *Osborn* and *Hoopeston.* These cases were concerned, however, either with licensed foreign insurers (*Osborn*) or with foreign insurers who employed agents to investigate risks within the regulating state (*Hoopeston*), therefore, they were not precedents which demanded *United*'s result. In 1966, the Wisconsin Supreme Court decided *Ministers Life & Cas. Union v. Haase,*[24] a case cited in *United* to further support the court's holding. The Wisconsin court also applied the *Osborn-Hoopeston* philosophy to expand state power under the due process clause. In *Ministers,* the plaintiff, a foreign direct mail-order insurance company not authorized to do business in Wisconsin, challenged that state's taxing and regulating law which by its terms purported to apply to the mail-order insurance business. The plaintiff sought a judgment declaring the statute unconstitutional on the ground, among others, that it was violative of due process. There, as in *United,* the foreign insurer had no agent or office within the state and in general transacted business by the use of the mail. Unlike the defendants in *United,* however, the insurer in *Ministers* had more contacts with the regulating state which included, among other things, group leaders.[25] The group leaders were residents of Wisconsin and were used as a means of selling the plaintiff's group-life and group-franchise insurance. These group leaders were not agents, yet they provided an additional contact upon which state interest could be built.[26] The Wisconsin Supreme Court found *Osborn* and *Hoopeston* sufficient authority to sanction the state's power to regulate the type of insurance transactions represented by the facts. *United* applied the same basic principle of law as

[22] Id.

[23] 66 Cal. 2d at 593, 427 P.2d at 209, 58 Cal. Rptr. at 609.

[24] 30 Wis. 2d 339, 141 N.W.2d 287, appeal dismissed, 385 U.S. 205 (1966). Justices Harlan and Stewart were of the opinion that probable jurisdiction should be noted. 385 U.S. at 205.

[25] The insurer in *Ministers* also used local doctors and national investigatory agencies as a means of acquiring information for underwriting purposes. 30 Wis. 2d at 347, 141 N.W.2d at 289-90.

[26] Id. at 358-59, 141 N.W.2d at 295.

Ministers, but placed a greater strain on that principle because it sanctioned a similar exercise of power where there were fewer contacts. In short, *United* is the first state supreme court case which sanctions the regulation of direct mail-order insurance companies where such companies maintain no agent or anything resembling an agent within the regulating state.

The defendants in *United* appealed to the United States Supreme Court. The Court dismissed appeal on a finding that the controversy did not present a substantial federal question.[27] This action by the Court was, in effect, a decision on the merits and the judgment of the California court is final.[28] The practical importance of *United* is revealed when it is realized what the consequences could be now that the decision is final. Before *United*, a mail-order insurer wishing to solicit California residents could easily evade that state's law by operating out of a state in which it was licensed and by maintaining no office, agent or anything resembling an agent within California. Under the older concepts of due process, California would not have the power to regulate or tax the insurer's transactions.[29] The effect of *United* is to preclude this ability to evade insofar as California is concerned; if other states follow California's lead, mail-order insurers will be unable to evade the regulatory laws of the state where their customers reside.

California's procedure in subjecting foreign mail-order insurers to its law was relatively simple. Section 700 of the California Insurance Code, a law enacted in 1935, provides that a person is forbidden to "transact" the business of insurance within California without first obtaining a certificate of authority from the California Insurance Commissioner.[30] Section 35, also enacted in 1935, describes by the use of rather broad language the activity which constitutes the "transaction" of the insurance business.[31] The activities of the defendants clearly met this description, therefore, they became subject to the regulatory provisions of section 700.[32] States which have laws similar to section 700 now have the power to subject foreign mail-order insurers to their regulatory laws.[33]

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[27] 88 S. Ct. 506 (1967).

[28] Ohio ex rel. Eaton v. Price, 360 U.S. 246, 247 (1959).

[29] See G. Kline, Regulation of Mail Order Accident and Health Insurance 24-25 (1949).

[30] Cal. Ins. Code § 700 (West 1955).

[31] § 35 Transact. "Transact" as applied to insurance includes any of the following:
(a) Solicitation.
(b) Negotiations preliminary to execution.
Cal. Ins. Code § 35 (West 1955).

[32] "It seems to us an ineluctable conclusion that through such 'solicitation' and such 'negotiations preliminary to execution' defendants 'transact . . . insurance business in this state.'" 66 Cal. 2d at 595, 427 P.2d at 210, 58 Cal. Rptr. at 610.

[33] In 1966, the National Association of Insurance Commissioners appointed a study group to study the overall problems of unauthorized insurance. The study group, relying on the validity of *United* and *Ministers* recommended that "an insurance commissioner should utilize his existing statutory prohibition against unauthorized insurance and definition of 'transacting business' to prohibit the doing of unauthorized insurance in his state. . . ." American Life Convention-Life Insurance Association of America, Report of the Study Group on Regulation and Taxation of Unauthorized Insurance 26 (1966).

For other state statutes which penalize or prohibit unauthorized insurance, see, e.g., If the *United* court had reached the opposite result, there would seem to be only one alternative by which the states could regulate all the activities of mail-order insurers. The alternative centers around the idea that each state could utilize its own laws to compel insurers incorporated within it to conform to the laws of other states. This could be done on a reciprocal basis—the incorporating state would forbid all domestic insurers, under penalty of loss of license, from doing business in a state where they are not licensed, provided such state has a similar law. "These statutes seem analogous to interstate compacts, which suggest another possible solution to the problem, but the statutes avoid the procedural difficulties of the compacts, especially the necessities of concerted action and Congressional approval."[34] The most effective statute, in theory, eliminates the reciprocal provision and simply prohibits domestic insurers from doing business in any state where they are not licensed. However, this type of statute in practice would not be entirely effective. First, by eliminating the reciprocal provision, a state would make itself an undesirable place for an insurer to incorporate, therefore, it is unlikely that all states would enact such a law. Second, even assuming that all states enact such a law, "[t]he domestic insurance department, which is probably overworked and understaffed, may be somewhat lax in enforcing this particular statute which primarily benefits persons outside the state."[35] The method of using the incorporating state is sound in a legal sense, but its undesirability is revealed when its ineffectiveness is recognized. Most likely, one reason for the ineffectiveness is that these statutes do not place primary responsibility in the state with the greatest interest, the state of the insured.

The holding in *United* will also affect federal jurisdiction over certain activity of mail-order insurers. Section 2(b) of the McCarran-Ferguson Act[36] provides that the Federal Trade Commission Act "shall be applicable to the business of insurance to the extent that such business is not regulated by State law."[37] The Supreme Court has held that the state regulation must be effective in order to preclude FTC jurisdiction.[38] An opposite holding in *United* would have rendered California's method of regulating mail-order insurers who do business in California solely through the mail completely ineffective. If the incorporating states of the insurers did not compel the insurers to comply with California law, the standard for FTC jurisdiction over the activities of the mail-order insurers in California could very well have been satisfied. This result would not have adequately protected California's interest. The Federal Trade Commission Act declares unlawful unfair and deceptive methods of competition in commerce,[39] and confers upon the com-

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Conn. Gen. Stat. Ann. § 38-20 (1960); Me. Rev. Stat. Ann. tit. 24, § 521 (1964); Pa. Stat. Ann. tit. 40, § 47 (1954).

[34] McGhee, Unlicensed Foreign Insurance Companies: The Jurisdictional and Enforcement Problems, 17 Mo. L. Rev. 73, 83-84 (1952).

[35] Hanson & Obenberger, Mail Order Insurers: A Case Study in the Ability of the States to Regulate the Insurance Business, 50 Marq. L. Rev. 175, 334 (1966).

[36] 15 U.S.C. §§ 41-77 (1964).

[37] Id. § 1012(b).

[38] FTC v. National Cas. Co., 357 U.S. 560 (1958). See Travelers Health Ass'n v. FTC, 298 F.2d 820 (8th Cir. 1962).

[39] 15 U.S.C. § 45 (1964).

mission certain powers to prevent the prohibited activity.[40] If the commission had jurisdiction over the business of foreign mail-order insurers in California and chose to exercise that jurisdiction it would not have the power to compel the insurers to comply with California law in regard to registration, solvency, and service of process. Consequently, if California were denied jurisdiction, foreign mail-order insurers could solicit business in the state free from substantial regulation.

As already indicated, the minimal contacts between the regulating state and the insurance companies in *United* do indeed place a strain on the due process requirement of a "sufficient nexus." The constitutional validity of California's action turned, however, on the correctness of the assumption by the California Supreme Court that the contacts presented by the fact situation gave California a substantial state interest in regulating the defendant companies.

The interest of a state in the activities of foreign insurers has customarily been given great weight in the determination of due process limitations on state restrictive statutes. This fact is best exemplified by two Supreme Court cases, *Travelers Health Ass'n v. Virginia*[41] *and McGee v. International Life Ins. Co.*,[42] which were concerned with the validity of state action in subjecting a foreign insurer to suit within the state by a state resident. The foreign insurer in *Travelers Health* was a mail-order company whose contacts with Virginia were quite similar to the contacts present in *United*. The major difference in the contacts was that the insurer in *Travelers Health* solicited new business in Virginia through the activities of unpaid local members. The Supreme Court held that Virginia had the power under due process to require the insurer to accept service of process by Virginia claimants on the Secretary of the Commonwealth. In support of this holding, the Court emphasized the state's interest in providing a local forum for those resident insureds who have claims against foreign insurers. The Court stated: "Prior decisions of this Court have referred to the unwisdom, unfairness and injustice of permitting policy holders to seek redress only in some distant state where the insurer is incorporated. The Due Process Clause does not forbid a state to protect its citizens from such injustice."[43]

The *McGee* case was concerned with precisely the same state interest as that involved in *Travelers Health*. In *McGee*, a beneficiary under a life insurance policy, the obligations of which were assumed by the defendant, recovered a judgment in a California court against the defendant based on that contract. The defendant's principal place of business was in Texas and it maintained no agent or office in California. So far as the record showed, the only contacts with California consisted of the transactions involved under the policy in question. The Court held that California obtained jurisdiction over the defendant when the defendant was served by registered mail in Texas. The Court stated: "It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State . . . . It cannot

40 Id. §§ 45, 46.
41 339 U.S. 643 (1950).
42 355 U.S. 220 (1957).
43 339 U.S. at 649.

be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims."[44]

The relevance of state interest in insurance to the resolution of due process issues is well established by the foregoing service of process cases as well as by *Osborn* and *Hoopeston*. In areas other than insurance the state interest does not seem to play as great a role. In *Hanson v. Denkla*,[45] the settlor of a trust, while a resident of Pennsylvania, created a trust appointing the Delaware Trust Co. as trustee. Later the settlor moved to Florida, and before her death the Delaware Trust Co. remitted the income to her and also carried on other acts of trust administration by use of the mail. One of the issues in the case was whether the activities of the trustee constituted sufficient contact with Florida to sustain that state's personal jurisdiction over the Delaware trustee. The Supreme Court, in denying Florida jurisdiction, distinguished *McGee* on its facts and then stated, "[t]his case is also different from *McGee* in that there the State had enacted special legislation (Unauthorized Insurers Process Act) to exercise what *McGee* called its 'manifest interest' in providing effective redress for citizens who had been injured by nonresidents engaged in an activity that State treats as exceptional and subjects to special legislation."[46] The Seventh Circuit has read *Hanson* as limiting *McGee* to the insurance field.[47]

When the validity of a state's regulation of a foreign insurer is challenged as being unconstitutional under due process, *Osborn* and *Hoopeston* should be sufficient authority to hold that state interest is a relevant factor. If a state's taxation of a foreign insurer is challenged on similar grounds, state interest again should be relevant. This is so because the United States Supreme Court for jurisdictional purposes evidently has not distinguished between the taxation and regulation of interstate insurance transactions.[48] Therefore, state interest should be relevant where solely the power to tax is challenged. This approach can be contrasted to that taken in *National Bellas Hess, Inc. v.*

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[44] 355 U.S. at 223.

[45] 357 U.S. 235 (1958).

[46] Id. at 252.

[47] Trippe Mfg. Co. v. Spencer Gifts, Inc., 270 F.2d. 821 (7th Cir. 1959). On state in personam jurisdiction over foreign corporations and the relevance of state interest, see 13 U. Kan. L. Rev. 544 (1965); 50 Minn. L. Rev. 946 (1966); 5 Washburn L.J. 240 (1966).

[48] The lack of distinction between the regulation and taxation of interstate insurance is evidenced by the *Todd* case. 370 U.S. 451 (1962). *Todd* was a taxing case, and in reaching its result the Court discussed the *Allgeyer* line of cases and also *Osborn* and *Hoopeston*. *Osborn* and *Hoopeston* were clearly regulation cases, while with the exception of *Allgeyer*, the earlier cases involved taxation.

Hanson in his article on mail-order insurers considered the due process standard for regulation and taxation as essentially the same. Hanson and Obenberger, supra note 35, at 230.

In *Ministers*, the Wisconsin Supreme Court in upholding a statute which contained both regulating and taxing provisions used precisely the same authority as *United* used to uphold a regulating statute. 30 Wis. 2d 339, 141 N.W.2d 287, appeal dismissed, 385 U.S. 205 (1966).

Finally, the McCarran-Ferguson Act allows the states to exercise jurisdiction in respect to both regulation and taxation. 15 U.S.C. §§ 1011-15 (1964).

Department of Revenue,[49] the Supreme Court's latest pronouncement on the jurisdictional restrictions imposed upon a state by the due process clause.

In *National Bellas Hess*, Illinois sought to compel an out-of-state vendor to collect and remit the Illinois use tax. The vendor, National Bellas Hess, Inc., had essentially the same contacts with Illinois as the defendants in *United* had with California. The Court held that Illinois under due process could not compel an out-of-state vendor to collect and remit the Illinois use tax where such vendor maintained no retail outlet or agent within the state. An examination by the Court of the relevant precedent revealed a sharp distinction "between mail order sellers with retail outlets, solicitors, or property within a State, and those who do no more than communicate with customers in the State by mail or common carrier as part of a general interstate business."[50] The Court was unwilling to obliterate this distinction by upholding Illinois' exercise of power. In denying Illinois jurisdiction the Court did not investigate the consequences of National Bellas Hess' business on Illinois nor did it investigate the state's interest arising from such business.[51] If this rationale had been applied to the facts in *United*, it is doubtful that California's action would have been upheld. However, previous insurance cases involving the jurisdictional aspects of due process and the recent disposition of *United* by the Supreme Court indicate that the rationale of *National Bellas Hess* is inapplicable when the state interest concerns the business of insurance.

It has been demonstrated that previous United States Supreme Court cases make state interest in insurance a relevant factor in determining the constitutionality of California's action; the only question remaining is whether that interest is sufficient to support jurisdiction when the contacts are minimal. California's interest in regard to the defendant's activities is revealed by a brief investigation of the provisions of the California Insurance Code to which the defendants are now subject. As a condition of admission to do business in California, the code requires a certain minimum of paid-in capital,[52] a certain minimum of surplus requirements,[53] and among other things, certain renewal requirements for paid-in capital.[54] In short, one of the major purposes of the code is to guarantee that the foreign insurer is solvent when he conducts business with California residents. Under section 704,[55] the commissioner has the power to suspend the certificate of authority if, after a hearing, he finds an insurer conducting his business in bad faith or in a fraudulent manner. California's interest here is to protect its citizens from investing in and depending upon an insolvent or fraudulent insurer. In addition, as mentioned in the court's opinion, the state is interested in avoiding any financial responsibility it may incur as a consequence of an insolvent insurer not being able to

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49 386 U.S. 753 (1967).

50 Id. at 758.

51 For a criticism of the decision in *National Bellas Hess*, see 9 B.C. Ind. & Com. L. Rev. 199 (1967).

52 Cal. Ins. Code § 700.01 (West 1955).

53 Id. § 700.02.

54 Id. § 700.03.

55 Id. § 704.

compensate an insured in the event of serious loss.[56] Finally, by requiring a foreign insurer to appoint an agent for service of process,[57] the state manifests an interest in providing a local forum for California residents who may have claims against a foreign insurer.

One defect in the *United* opinion is that it does not indicate how much business the defendants had solicited in California but, assuming that the business was substantial, it is difficult to maintain that California did not act in pursuance of its legitimate interest when it subjected the defendants to its regulatory laws. The propriety of California's action is supported by the following statement by Justice Douglas in his concurring opinion in *Travelers Health:*

> A state is helpless when the out-of-state company operates beyond the borders, establishes no office in the state, and has no agents, salesmen, or solicitors to obtain business for it within the state. Then it is beyond the reach of process. In the present case, however, that is only the formal arrangement. The actual arrangement shows a method of soliciting business within Virginia as active, continuous, and methodical as it would be if regular agents or solicitors were employed.[58]

It is evident that the effect of a foreign insurer upon a regulating state is not dependant upon the number of agents the insurer employs in the state. That fact coupled with the state interest, embodied in the California Insurance Code should be sufficient to sanction the power exercised in *United.*

STEPHEN L. JOHNSON

Estate Taxation—Marital Deduction—Finality of State Decree Determining Property Interest.—*Commissioner v. Bosch.*[1]—The testator, Herman Bosch, executed a trust agreement providing for the payment of trust income to his wife for her life, and granting her a general power of appointment over the principal upon her death. Subsequently, the wife, to avoid the inclusion of the trust corpus as part of her estate subject to federal tax upon her death, executed a partial release of her power of appointment.[2] Upon the death of Bosch, his executor claimed the widow's trust as a marital

[56] 66 Cal. 2d at 593, 427 P.2d at 209, 58 Cal. Rptr. at 609.
[57] Cal. Ins. Code § 1600 (West 1955).
[58] 339 U.S. at 653-54.

[1] 387 U.S. 456 (1967).
[2] Under the terms of the trust agreement created in 1930, and amended in 1931, Mrs. Bosch was granted a general power of appointment over the trust corpus. On October 25, 1951, Mrs. Bosch executed a release of her power to appoint the trust corpus in favor of herself, her estate, her creditors or creditors of her estate. Under the Internal Revenue Code, the value of the gross estate includes property with respect to which a general power of appointment is exercised, but the Code also provides that the exercise of a general power of appointment created before October 21, 1942, and partially released prior to November 1, 1951, will not be deemed to be the exercise of a general power of appointment. Int. Rev. Code of 1954, § 2041(a)(1).